



**U.S. Equal Employment Opportunity Commission
Denver Field Office**

303 East 17th Avenue
Suite 410
Denver, CO 80203
(303) 866-1300
TTY (303) 866-1950
Fax: (303) 866-1085

Charging Party: Michael P. Prescott
EEOC Charge No.: 541-2011-01596

COMTECH MOBILE DATACOM CORP
20430 Century Blvd.
Germantown, MD 20874

To Whom It May Concern:

Your organization is hereby requested to submit information and records relevant to the subject charge of discrimination. The Commission is required by law to investigate charges filed with it, and the enclosed request for information does not necessarily represent the entire body of evidence which we need to obtain from your organization in order that a proper determination as to merits of the charge can be made. Please submit a response to the requested information by the deadline cited below.

The information will only be disclosed in accordance with 29 C.F.R. 1601.22, or otherwise made public if the charge results in litigation.

Sincerely,

Andrew G. Williams
Supervisory Investigator

Response Deadline Date: August 12, 2011

The following dates are considered to be the "relevant period" for the attached Request for Information:
April 1, 2010 - April 28, 2011

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

REQUEST FOR INFORMATION

Charging Party: Michael P. Prescott
Respondent: COMTECH MOBILE DATACOM CORP
EEOC Charge No.: 541-2011-01596

1. Give the correct name and address of the facility named in the charge.
2. State the total number of persons who were employed by your organization during the relevant period. Include both full and part-time employees. How many employees are employed by your organization at the present time?
3. Submit a written position statement on each of the allegations of the charge, accompanied by documentary evidence and/or written statements, where appropriate. Also include any additional information and explanation you deem relevant to the charge.
4. Submit copies of all written rules, policies and procedures relating to the issue(s) raised in the charge. If such does not exist in written form, explain the rules, policies and procedures.

Issue: LAY OFF

1. If the charging party was laid off, submit the following:
 - a. date of lay off,
 - b. reason for lay off,
 - c. statement of whether the charging party had any right of appeal, and whether the charging party made use of any appeal rights
 - d. person recommending the lay off, including name, position held,
 - e. person making final decision to lay off the charging party, including name, position held. Attach copy of any evaluation or investigation report relating to the discharge, and
 - f. copies of all pertinent documents in the charging party's personnel file relating to the subject lay off.
2. Explain your lay off procedures in effect at the time of the alleged violation. If the procedures are in writing, submit a copy.
3. List all the employees who worked at the same facility with charging party who were laid off during the relevant period. For each employee, include employees name, position title, and reason for and date of lay off.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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303 East 17th Avenue, Suite 510
Denver, CO 80203
(303) 866-1300
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FAX (303) 866-1085
1-800-669-4000

Dear Colleague:

EEOC has a voluntary mediation program that provides a confidential alternative to potentially disruptive, time-consuming and expensive investigation and litigation of discrimination charges. The Charging Party who filed the enclosed charge of discrimination against your organization has accepted the opportunity to participate in the EEOC's mediation program and we now extend to your organization the opportunity to participate in this process.

Mediation is a process in which a trained and experienced neutral third party, the mediator, helps the parties express their views of the charge and to explore options for reaching a mutually acceptable resolution which meets everyone's unique interests. Mediation frequently preserves or builds better working relationships or creates the opportunity for a mutual separation. To participate, you need only an open mind to the possibility of resolution.

If you select mediation, our staff will be directed to suspend the investigation until the mediation is concluded. Your organization is not required to submit a response to the charge while it is in mediation. You may elect mediation by signing and faxing the enclosed Agreement to Mediate to the ADR Program at 303/866-1005.

If you elect to forgo mediation, please submit the position statement or comply with the request for information by the date indicated on the enclosed Notice of Charge of Discrimination. We also request that you call the Mediator named on the attached Notice Of Discrimination to inform us of your decision and we will promptly forward your file to our enforcement staff.

If you are not certain if mediation is right for you, or have questions, Ms. Gloria-Johnson, ADR Coordinator, and I are available to meet with your executive and management team to explain our successful program and how it can benefit your organization. Ms. Gloria-Johnson can be reached at 602/640-5022 or at Yvonne.gloria-johnson@eeoc.gov

We appreciate your willingness to consider mediation as a means of promoting equal employment opportunity and the economic and social benefits it ensures. Please don't hesitate to call upon me or my staff in the event we may be of service.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Sienko", is written over the word "Sincerely,".

Nancy Sienko,
Field Office Director

AGREEMENT TO MEDIATE

CHARGE NUMBER: 541-2011-01596

FEPA NUMBER:

Charging Party: Michael P. Prescott

Respondent: COMTECH MOBILE DATACOM CORP

This is an agreement by the above parties to participate in mediation in the above referenced charge. The parties understand that mediation is a voluntary process, which may be terminated at any time. The parties and, if they desire, their representatives and/or attorneys, are invited to attend a mediation session. No one else may attend without the permission of the parties and the consent of the mediator(s).

The mediator(s) will not function as the representative of either party. However, the mediator(s) may assist the parties in crafting a settlement agreement. Each party acknowledges being advised to seek independent legal review prior to signing any settlement agreement. The parties acknowledge that they have received a copy of the Mediation Fact Sheet. The parties acknowledge that the mediator(s) possesses the discretion to terminate the mediation at any time if an impasse occurs or either party or the mediator deems the case inappropriate for mediation.

The parties acknowledge that participation in the scheduled mediation does not constitute an admission by either party of any wrongdoing or of a violation of the laws enforced by EEOC. Furthermore, the Charging Party acknowledges that participation in the scheduled mediation by the Respondent does not commit the Respondent to providing a monetary resolution of the matter.

The parties recognize that mediation is a confidential process and agree to abide by the terms of the attached Confidentiality Agreement. The parties acknowledge that if a settlement is reached as a result of the mediation, the assigned mediator(s) is required to report to EEOC any benefits received. This information is reported only for purposes of providing aggregate data to the EEOC for mediation program evaluation purposes, and the individual terms of the agreement will not be disclosed to the public.

Charging Party	Date	Respondent	Date
Michael P. Prescott		COMTECH MOBILE DATACOM CORP	
Charging Party Printed Name		Respondent Printed Name	
(240) 449-9994 /		/	
Charging Party Phone & Cell Phone		Respondent Phone & Cell Phone	
Charging Party's Representative	Date	Respondent's Representative	Date
CP Representative Printed Name		R Representative Printed Name	
/		/	
CP Representative Phone & Cell Phone		R Representative Phone & Cell Phone	



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Effective Position Statements

What should a position statement include?

At a minimum, it should include specific, factual responses to every allegation of the charge. The position statement should clearly explain the respondent's version of the facts and identify the specific documents and witnesses supporting the position. A well drafted statement can help EEOC accelerate the investigation and limit requests for additional information. Keep the following points in mind as you prepare the response to the charge:

- Address each alleged discriminatory act and your position regarding it, and provide copies of documents supporting your position and/or version of the events
- Provide a description of the company; include legal names and addresses, name, address, title and phone number of the person responsible for responding to the charge, primary function of the business, and the number of employees. A staffing or organizational chart is also useful in helping to focus the investigation.
- Provide copies or descriptions of any applicable practices, policies or procedures
- Identify any other individuals who have been similarly affected by these practices, policies or procedures; describe the circumstances in which the practices, policies, or procedures have been applied.
- If individuals who were in a similar situation to the Charging Party were not similarly affected, explain why.
- Identify official(s) who made decisions or took action relating to the matter(s) raised in the charge.
- Be specific about date(s), action(s) and location(s) applicable to this case.
- Provide copies of internal investigations of the alleged incidents or grievance hearing reports.
- Inform EEOC if the matter has been resolved or can be resolved; if it can be resolved, please indicate your proposal for resolution

An effective position statement is clear, concise, complete and responsive.

How much time is normally allowed for preparation of a position statement?

Thirty days is normally allowed for responding to the charge. A brief extension of time may be allowed in particular cases where extensive interviews need to be conducted or documents reviewed, but only when it is clear that the employer is working in good faith to supply all of the necessary information.

EEOC FORM 131 (11/09)

U.S. Equal Employment Opportunity Commission

Dan Wood, President
COMTECH MOBILE DATACOM CORP
20430 Century Blvd.
Germantown, MD 20874

PERSON FILING CHARGE

Michael P. Prescott

THIS PERSON (check one or both)

☐

Claims To Be Aggrieved

☐

Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

541-2011-01596

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

☐

Title VII of the Civil Rights Act (Title VII)

☐

The Equal Pay Act (EPA)

☒

The Americans with Disabilities Act (ADA)

☒

The Age Discrimination in Employment Act (ADEA)

☐

The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1.

☐

No action is required by you at this time.

2.

☐

Please call the EEOC Representative listed below concerning the further handling of this charge.

3.

☒

Please provide by **22-AUG-11** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

4.

☒

Please respond fully by **22-AUG-11** to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

5.

☒

EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **01-AUG-11** to **Maria Vela, ADR Mediator, at (303) 866-1364**. If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Andrew G. Williams,
Supervisory Investigator

EEOC Representative

Telephone (303) 866-1307

Denver Field Office
303 East 17th Avenue
Suite 410
Denver, CO 80203
Fax: (303) 866-1085

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐

Race

☐

Color

☐

Sex

☐

Religion

☐

National Origin

☒

Age

☒

Disability

☐

Retaliation

☐

Genetic Information

☐

Other

See enclosed copy of charge of discrimination.

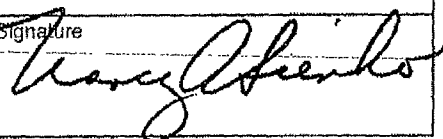
Date

7-21-11

Name / Title of Authorized Official

Nancy A. Sienko,
Director

Signature



Enclosure with EEOC
Form 131 (11/09)

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec.

1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 207(f) of GINA, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC Amended 541-2011-01596	
JUL 13 2011 COLORADO CIVIL RIGHTS DIVISION State or local Agency, if any		and EEOC	
Name (Indicate Mr., Ms., Miss, MRS., or Dr.) Mr. Michael P. Prescott		Home Phone (Incl. Area Code) (240) 449-9994	Date of Birth 05-05-1955
Street Address City, State and ZIP Code 7365 Village Square Drive, Apt 1623, Castle Rock, CO 80108			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name COMTECH MOBILE DATACOM CORP		No Employees, Members Unknown	Phone No. (Include Area Code)
Street Address City, State and ZIP Code 20430 Century Blvd., Germantown, MD 20874			
Name		No Employees, Members	Phone No. (Include Area Code)
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 04-11-2011 04-11-2011 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)). I was laid off from my Sales Manager position on April 11, 2011. I was told that the company had decided to cancel its commercial operations in favor of its government operations. I believe I have been discriminated against based on my age (56) and disability, in violation of the Age Discrimination in Employment Act of 1967, as amended, and within the meaning of the Americans with Disabilities Act of 1990, as amended, insomuch as: I was hired by the Respondent in October 2009 and started working in December 2009. I had responsibility for national territory coverage which required travel to visit accounts as well as travel to the corporate office in Maryland. I performed satisfactorily which was reflected in the very positive performance review that I received in mid-2010. I was diagnosed with a disability in early January 2011. I notified the Respondent of the diagnosis at that time and remained completely up front with them about my expected need for FMLA leave for treatment.			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
I declare under penalty of perjury that the above is true and correct.		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	
7/6/11 Date		[Signature] Charging Party Signature	

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**541-2011-01596****Colorado Civil Rights Division**

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

In mid-January 2011, I was asked to interview Steve Katz for a Sales Manager position. It was presented to me that this candidate interview was to supplement the outside sales staff since the company had just hired another Sales Representative in December 2010. After Steve was hired in February 2011, I was informed that I now worked under him.

I continually updated the Respondent of my treatment needs and scheduling requirements throughout the process of diagnosis and determination of treatment options. Management was cooperative in accommodating my travel and scheduling needs and I continued to perform at a satisfactory level.

Despite my performance, on April 11, 2011, I was notified that I was being laid off. I asked if there were any other sales positions available within the company. I was told there weren't any positions available.

I believe I was wrongfully terminated and discriminated against because of my disability. In addition, I believe I was passed up for consideration and retention for another position within the company because of my disability and age. Steve (who is young and is not disabled) has no previous experience in government operations yet he was retained by the Respondent.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Date

Charging Party Signature